



PATENT

Docket No.: J2167.0061/P061

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Dated: April 5, 2002

Signature:

(Michael J. Scheer)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Deborah Everling, et al.

Serial No.: 09/204,390

Group Art Unit: 2164

Filed: December 2, 1998

Examiner: J. Pwu

For:

MERCHANT TRANSACTION
DATA MINING METHOD

Box DAC
Assistant Commissioner for Patents
Washington, D.C. 20231

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181(a)

On February 26, 2002, Applicants received a Notice of Abandonment (attached as Exhibit A), dated February 12, 2002. The Notice states that the above-referenced application is being held abandoned due to Applicants' failure to timely respond to the Office Action that was mailed by the Patent Office on June 11, 2001. Applicants respectfully request that the holding of abandonment in this case be withdrawn for the reasons set forth below.

If an applicant fails to respond to an Office Action on time because he never received it, the Patent Office may withdraw its holding of abandonment provided that:

the applicant includes a statement from the practitioner stating that the office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office Action was not received. A copy of the docket where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

M.P.E.P. § 711.03(c)(ii). See also Withdrawing the Holding of Abandonment When Office Actions Are Not Received, 1156 O.G. 53 (Nov. 16, 1993).

I never received a copy of the June 11th Office Action. On February 4, 2002, I spoke to the Examiner who confirmed that in June of 2001, the June 11th Office Action was mailed to my office which was then located at the law firm of Ostrolenk, Faber, Gerb & Soffen, LLP ("Ostrolenk").¹ I examined the application file jacket, however, and found no indication that the June 11th Office Action had been received. I also reviewed Ostrolenk's screen print of this matter's CPI entry (attached as Exhibit B) and copies of pages from Ostrolenk's manual docket for this matter (attached as Exhibit C). The docket records, like the file jacket, also fail to indicate that Ostrolenk received the June 11th Office Action.

*Explain
need what's due*

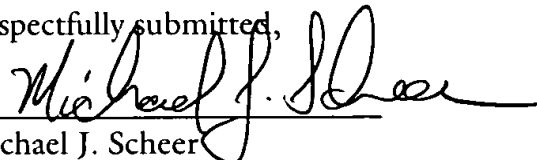
Moreover, both the file jacket and docket records show that on December 7, 2001 – four days before the end of the six-month response period – I wrote a letter to the Examiner (attached as Exhibit D) informing him that I had yet to receive the anticipated Office Action and asking him to advise me of the status of the application.

¹ In January 2002, I left Ostrolenk and joined the law firm of Dickstein, Shapiro, Morin & Oshinsky LLP.

All of the above-described circumstances indicate that the June 11th Office Action was never delivered to Ostrolenk. As a result, I respectfully ask that the Patent Office withdraw its holding of abandonment of this application.

Dated: April 5, 2002

Respectfully submitted,

By 

Michael J. Scheer

Registration No.: 34,425

DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP

1177 Avenue of the Americas

41st Floor

New York, New York 10036-2714

Attorneys for Applicant